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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,467

09/29/2006

Stein Kuiper

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24737

7590

05/21/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

COLLINS, DARRYL J

ART UNIT

PAPER NUMBER

2873

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,467	<b>Applicant(s)</b> KUIPER ET AL.	
	<b>Examiner</b> DARRYL J. COLLINS	<b>Art Unit</b> 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,5-10,13-23,25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,11,12,24 and 27-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed December 29, 2009 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With regard to Applicant's arguments that Tsuboi et al (U.S. Patent Number 6,702,483) teaches an optical element wherein the two fluids "are substantially equal in ref[r]active index (see abstract) so the boundary between the fluids does not function as a lens" (Applicant Remarks, page 12, fifth paragraph), it should be noted that Tsuboi et al continues to teach the first and second liquids as having different index of refractions (column 17, lines 32-42) as pointed out in the Office Action mailed September 29, 2008 (page 2, last line to page 3, first line).

In view of the arguments presented above, the rejections of claims 1, 4, 11, 12, 24 and 27-34 are repeated.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 2, 4, 11, 12, 24 and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboi et al (U.S. Patent Number 6,702,483) in view of Floyd (U.S. Patent Number 5,684,637) and further in view of Sigler (U.S. Patent Number 4,958,919).

Although Tsuboi et al teaches a variable focus lens (column 17, lines 47-48) comprising a first fluid (Figure 1, element 121) and a second fluid (Figure 1, element 122) wherein the fluids have different indices of refraction (column 17, lines 32-42) and is selectively controlled (column 18, lines 1-9) as claimed in independent claims 1, 24, 27, 30, 31 and 35, Tsuboi et al fails to teach wherein one of the fluids is non-colorless. Floyd, however, teaches a variable focus lens (Figure 3) wherein the fluid is colored (column 9, lines 53-54), wherein Sigler further teaches a means for color correction when using liquid lens elements (page 1, lines 9-11) such that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the optical element as taught by Tsuboi et al with the colored fluid as taught by Floyd and the color correction means as taught by Sigler for the purpose of optical filtering.

With regards to claim 2, the use of a dye or pigment is believed to be an inherent feature of a colored fluid.

With regards to claim 4, Tsuboi et al and Sigler teach all of the limitations of the instant invention as applied to independent claim 1 above, wherein Tsuboi et al further teaches the two fluids as having differing transmittance properties (column 2, lines 25-26). In view of the well known technique of using colored fluids in fluid lenses as taught by Floyd, it would have been obvious to one of ordinary skill in the art at the time the invention was made to color the fluids as taught by Tsuboi et al with differing dyes to provide a specific filtering capability.

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With regards to claims 11 and 32, it is very well known in the optic art to use various colors (i.e., yellow, red or brown) to achieve filtering of a specific wavelength such that it would have been obvious to one of ordinary skill in the art to use a specific color dye to achieve selective filtering.

Again, Tsuboi et al and Sigler teach all of the limitations of the instant invention as applied to independent claim 1 above, wherein Tsuboi et al further teaches the second fluid as being axially displaced from the first fluid (Figure 1) wherein the fluids are in contact over a meniscus (Figure 1, element 124), the lens further comprising a first electrode (Figure 1, element 125) and a second electrode (Figure 1, element 102), wherein the shape of meniscus can be controlled by an applied voltage between the first and second electrodes (column 18, lines 1-9) as claimed in dependent claim 12.

One again, Tsuboi et al teaches all of the limitations of the instant invention as applied to independent claim 1 above, and further teaches the use of such a variable focus lens in other kinds of optical devices (column 20, lines 24-25) as claimed in dependent claims 28, 29, 33 and 34.

### ***Allowable Subject Matter***

Claims 3, 5-10, 13-23, 25 and 26 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The reasons for indicating allowable subject matter are as set forth in the Office Action mailed March 17, 2008.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARRYL J. COLLINS whose telephone number is (571)272-2325. The examiner can normally be reached on 6:30 - 5:00 Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darryl J. Collins/  
Primary Examiner  
Art Unit 2873

18 May 2009